

**MIXING OF DELINQUENTS AND NON-DELINQUENTS IN
RESIDENTIAL FACILITIES
Effective Date: 7/6/87**

I. PURPOSE

The purpose of these regulations is to ensure that placement of delinquents, juveniles charged with delinquent acts and non-delinquents is designed to protect the best interests and safety of all children in placement.

The legal base for these regulations is in the Delaware Code, Title 10, Chapter 9, Subsection 937A and Title 29, Chapter 90, Subsections 9003 (11), (14).

II. POLICY

The policy of the Department of Services for Children, Youth and Their Families is to prohibit the mixing of delinquents and nondelinquents in residential facilities, except in certain circumstances. This policy outlines procedures to be used when mixing is to occur.

III. DEFINITION OF TERMS

Delaware Code, Title 10, Chapter 9, Subsection 937A, provides the following definitions:

- A. "Level 1 Juvenile Offense" means any delinquent act constituting a felony under the laws of this State, any other State, the United States or any other territory of the United States.
- B. "Level 2 Juvenile Offense" means any delinquent act constituting a Class A or a Class B misdemeanor, under the laws of this State, any other State, the United States or any other territory of the United States.

- C. "Level 3 Juvenile Offense" means any delinquent act constituting a Class C or an unclassified misdemeanor under the laws of this State, any other State, the United States or any other territory of the United States.
- D. "Mixing" means placement of any child charged with a Level 1 Juvenile Offense or found to have committed any delinquent act, in the same facility with dependent or neglected children.
- E. "Facility" means any shelter, group home, foster home, treatment center, institution, or any other place designated as a temporary or permanent placement for children, excluding accredited hospitals.
- F. "Repeat Offender" means any child adjudicated delinquent for 3 or more separate delinquent acts, not including Class C or unclassified misdemeanors, within any period of twelve months.

In addition, the following definitions are used in these regulations:

- G. "Primary Case Manager" means the person designated by the Department to coordinate the delivery of services for the child in accordance with Departmental Policy 201 on "Inter-Divisional Case Management."
- H. "Placement resource" means the agency which is responsible for admission decisions for each facility.

IV. PROCEDURES

A. Limitations on Mixing

Delaware Code, Title 10, Chapter 9, Subsection 937A, prohibits mixing unless the following requirements are met:

When a child is charged with or found to have committed a Level 1 juvenile offense or is a repeat offender, the Department must obtain a court order authorizing such placement, after the Secretary or a Division Director of the Department of Services for Children, Youth and Their Families shall recommend such

placement in writing. Before authorizing mixing, the Family Court must specifically find that the proposed placement of the child offender does not represent a physical risk to others, and that the placement is not contrary to the best interests of the other children in the facility.

1. When a child who is not a repeat offender is found to have committed a Level 2 juvenile offense, no mixing shall occur unless the Secretary or a Division Director of the Department of Services for Children, Youth and Their Families, after review of the case, certifies in writing that the proposed placement of the child offender does not represent a physical risk to others, and that the placement is not contrary to the best interests of the other children in the facility.
2. When a child who is not a repeat offender is found to have committed a Level 3 offense, the Department of Services for Children, Youth and Their Families, may mix that child subject to its regulations, provided that such placement is not contrary to the best interests of the other children in the facility.

B. Procedures for Approval of Mixing

1. Before making a placement plan, the primary case manager shall:
 - a. Determine if the child is charged with or has been found to have committed a Level 1, Level 2, or Level 3 offense, and if the child is a repeat offender and is still active with Family Court.
 - b. If the child is found to be delinquent, complete the Classification Instrument after consulting with the following sources of information: family members, written records, staff of the most recent residence, probation officer, and/or social worker, therapist, and Family Court Liaison. In addition, consultations may be made with school and neighborhood resources. The

Classification Instrument is a tool to focus attention on behaviors which have proven to be indicators of physical risk to others.

When a proposed placement would result in mixing of a child who is charged with or found to have committed a juvenile offense or is a repeat offender, the primary case manager shall request permission to mix from the director of the division which would be providing the placement service. The primary case manager shall provide the following material in support of such a request:

- c. A written request which supports the primary case manager's professional opinion that the placement is appropriate. This shall include discussion of specific extenuating circumstances, such as, mitigating details about the child's behaviors, current progress, individual or family dynamics, etc.
 - d. The completed referral packet
 - e. A criminal history
 - f. A placement history
 - g. A current social service history, if available
 - h. A copy of the completed classification instrument
2. The division director of the division providing the placement shall provide a written disposition, including a rationale for the decision.

Divisions providing placements are responsible for assuring that privately operated facilities are aware of and in agreement with the classification and placement procedures outlined herein.

If the proposed placement requires a court order, the division director of the division providing the placement shall request the Deputy Attorney General who represents the Department to file a petition with the Family Court.

If there is disagreement between the referring division and the division which would be providing the placement, the case shall be resolved by the Case Coordinating Committee in accordance with Departmental Policy 201 on "Inter-Divisional Case Management."

C. Emergency After-Hours Placement

The primary case manager shall make all reasonable efforts to determine the delinquency status of children who require emergency placement. This shall include asking the child and family if the child has ever been arrested or charged, and asking about the child's current status with the Family Court.

When emergency placement is necessary to protect the health and welfare of the child, such placement is not contrary to the best interests of the other children in the facility, and full information is unavailable, the primary case manager shall proceed with the emergency placement. Available information on the child should be disclosed to the emergency placement personnel by the primary case manager at the time of the placement.

The primary case manager shall consult with the Family Court to determine the child's delinquency status during the next business day. If the child is found to have committed a Level 3 offense, and is not a repeat offender, the child may remain in the emergency placement pending completion of the process outlined above. Repeat offenders, children charged with or found to have committed a Level 1 offense, and children found to have committed a Level 2 offense shall be moved to a non-mixed facility as soon as the primary case manager discovers the offenses or charges.

D. Review of Placements

Delaware Code, Title 10, Chapter 9, Subsection 937A states:

"(4) All placements which result in mixing of Level 1 or Level 2 child offenders shall be reviewed within 72 hours by the Department. Subsequently, such placement shall be reviewed after two months, and regularly thereafter. The two-month review shall be made by the Foster Care Review Board. The purpose of the review shall be to determine whether, under placement, the child offender continues not to represent a physical risk to others, and that such placement is not contrary to the best interests of the other children in the facility."

When a placement occurs which results in mixing of Level 1 or Level 2 child offenders, the division director who authorized the placement shall immediately notify the Administrator of the Office of Case Management.

Within 72 hours of the placement, the Office of Case Management shall review the division director's written disposition, along with the materials provided by the primary case manager in the original request. The Office of Case Management will then contact the placement facility to determine if the child has appropriately adjusted to the placement.

If the Office of Case Management review finds that the child's placement is contrary to the best interests of the other children in the facility, the case shall be forwarded immediately to the Secretary for review and a final resolution.

The Administrator of the Office of Case Management shall notify the Foster Care Review Board of any placement which results in the mixing of a Level 1 or Level 2 child offender. The Board will conduct its two-month review in accordance with procedures developed by the Board.

If the child's placement is subject to ongoing semi-annual review by the Foster Care Review Board, as mandated by Chapter 38,

Title 31 of the Delaware Code, this review shall meet the "regular review" requirements of Delaware Code, Title 10, Chapter 9, Subsection 937 (A)(4).

If the child's placement is not subject to semi-annual review by the Foster Care Review Board, the Office of Case Management shall review such placements at six-month intervals.

Findings of reviews shall be forwarded to the primary case manager, the directors of all divisions involved in the case, and, in the case of a Level 1 child offender, the Family Court.